

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>88-11485</u>
JOANN SHANKS MASON	)	
	)	
Debtor	)	
	)	
JOANN SHANKS MASON	)	F I L E D
	)	at 4 O'clock & 37 min P.M.
Movant	)	Date 7-31-89
	)	
vs.	)	
	)	
COLONIAL MORTGAGE COMPANY	)	
	)	
Respondent	)	

ORDER

Joann Shanks Mason, debtor in this Chapter 13 proceeding has objected to the allowance of the proof of claim filed by Colonial Mortgage Corporation ("Colonial") in the sum of Two Thousand Seven Hundred Fifty-Two and No/100 (\$2,752.00) Dollars. The objection to claim was heard at the confirmation hearing, and this court makes the following findings of fact and conclusions of law.

Colonial filed its proof of claim in the sum of TwentyFour Thousand Six Hundred Twenty and 42/100 (\$24,620.42) Dollars, representing the principal outstanding balance due on a promissory note from the debtor and James M. Mason, secured by real property.

In-addition to the principal balance claim, Colonial filed a secured pre-petition arrearage claim in the amount of Two Thousand Seven Hundred Fifty-Two and 07/100

(\$2,752.07) Dollars. The pre-petition arrearages covered the period June, 1988, through December, 1988. The claim is broken down as follows:

Late fees	78.33
Escrow	369.52
Attorney's fees	715.00
Principal	228.44
Interest	<u>1,360.77</u>
Total	\$2,752.07

The debtor has objected to the attorneys fees portion of this claim.

First, a determination must be made as to the burden of proof in resolving this objection to claim. A proof of claim filed by a creditor in a bankruptcy proceeding is presumed to be a valid claim. See In re: Whet, Inc., 33 B.R. 424 (Bankr. Mass. 1983); Whitney v. Dresser, 200 U.S. 532 (1906); 11 U.S.C. §502. A party objecting to the claim has the burden to go forward with evidence sufficient to defeat the claim. Whet, Inc., supra; 3 Collier on Bankruptcy ¶502.01(3) (L. King 15th Ed. 1989). The ultimate burden of proof substantiating the claim remains with the creditor. In re: Whet Inc., supra; In re: Mobile Steel Company, 563 F.2d 692 (5th Cir. 1977). To substantiate the claim, a creditor must meet the standard of proof, a preponderance of the evidence. 3 Collier on Bankruptcy ¶502.01(3) (L. King 15th Ed., 1989).

Whether to allow the recovery of attorneys fees by Colonial is governed by the provisions of 11 U.S.C. §506(b) which

provision provides in pertinent part:

(b) To the extent that an allowed secured claim is secured by property the value of which, . . ., is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, cost of charges provided for under the agreement under which such claim arose . . . (emphasis added)

The allowance of fees therefore requires a determination that:

1. Colonial is an oversecured creditor.

2. The agreement upon which the claim arose, in the instant case the promissory note and deed to secure debt, provide for the recovery of attorneys fees, and

3. the claimed fees are reasonable.

In the present case, there is no dispute that the provisions of the note which is the basis for Colonial's claim provides in part, "in the event of default in payment of this note, and if the same is collected by an attorney at law, the undersigned agree(s) to pay all costs of collection, including any reasonable attorneys fee."

There was no evidence presented by either party as to value of the collateral securing the claim of Colonial. On the issue of reasonableness, the Bankruptcy Code, under 11 U.S.C. §506(b), replaces the Bankruptcy Act reliance upon state standards of enforceability with a federal standard of reasonableness in the determination of attorneys fees. See In re: Curtis, 83 B.R. 853 (Bankr. S.D. Ga. 1988). Under federal law in this circuit, reasonableness in the area of attorneys fees is controlled by Norman

v. Housing Authority of City of Montgomery, 836 F.2d 1292 (11th Cir. 1988). The Norman decision establishes as the method for determining reasonable attorneys fees, the number of allowable hours claimed by an attorney multiplied by a reasonable hourly rate. This is the lodestar standard as enumerated in Lindy Brothers Bldrs., Inc. v. American Radiator and Standard Sanitary Corp., 487 F.2d 161 (3rd Cir. 1973).

In the present matter, the debtor has met the required burden of going forward with his objection. In raising the objection to the reasonableness of attorneys fees, debtor referred this court to the proof of claim filed by Colonial which asserts a claim for attorneys fees in the amount of Seven Hundred Fifteen and No/100 (\$715.00) Dollars without the supporting documentation required under the Norman decision. In response to the objection, Colonial asserts that the amounts claimed are reasonable in that the security deed issued as collateral for the loan which is the basis for the secured claim of Colonial is an FHA mortgage, and the costs

and attorneys fees incurred in connection with foreclosure proceedings are set by FHA. Colonial contends that, "the FHA certainly sets reasonable, if not very low, fees and costs on foreclosure proceedings." This assertion does not meet the required proof under the Norman decision. Colonial has set forth no evidence to establish the amount of time expended by counsel, the purpose for the expenditure of time in the protection of this creditor's right, and has set forth no evidence as to a reasonable hourly rate of compensation.

Under the requirements of §506(b), Colonial must establish that it is an oversecured creditor. There is no evidence whatsoever as to value of the property and, without this evidence of value, this court cannot determine that Colonial is an oversecured creditor entitled to attorneys fees under §506(b).

Colonial has failed to establish by a preponderance of the evidence that it is entitled to its claim for attorneys fees in the amount of Seven Hundred Fifteen and No/100 (\$715.00) Dollars. The objection of the debtor to this portion of the claim of Colonial is sustained. Having sustained the objection, the remainder of the debtor's contentions on the objection to the allowance of attorneys fees is not addressed by this order. IT THEREFORE ORDERED that The claim of Colonial Mortgage Company for pre-petition arrearages is reduced to Two Thousand Thirty-Seven and 07/100 (\$2,037.07) Dollars.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 31st day of July, 1989.